

Message Text

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TAGS: TGEN, OECD, UNCTAD

SUBJECT: OECD/CST: AD HOC POLICY GROUP ON MULTINATIONAL
ENTERPRISES - MEETING OF UNCTAD GROUP B COUNTRIES TO CO-
ORDINATE POSITION ON TRANSFER OF TECHNOLOGY, JULY 17-18

REF: (A) OECD 16930; (B) STATE 152204

BRUSSELS PASS TO DAVIDOW

1. THERE IS QUOTED BELOW A POSITION PAPER FOR THE
USE OF THE USDEL TO THE SUBJECT MEETING. REQUEST THAT
THIS BE IMMEDIATELY PASSED TO STEPHEN BOND OF THE DEPART-
MENT'S LEGAL ADVISER'S OFFICE, WHO WILL SERVE AS CHAIRMAN
OF THE DELEGATION, AND HAS BEEN IN PARIS FOR THE RECENT
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MEETING OF THE OECD INVESTMENT COMMITTEE (IME). ALSO PASS
TO MESSRS. BASEK AND WAIT OR ANY OTHERS FROM MISSION WHO
MAY ATTEND THE MEETINGS AS ADVISERS. MR. JOEL DAVIDOW,
CHIEF, FOREIGN COMMERCE SECTION, ANTITRUST DIVISION,

DEPT. OF JUSTICE, PRESENTLY IN BRUSSELS WITH EEC DIRECTOR GENERAL OF COMPETITION, PLANS TO ATTEND AS ALTERNATE CHAIRMAN.

2. THE POSITION PAPER WAS APPROVED BY ALL INTERESTED AGENCIES AT A MEETING ON JULY 11 OF THE INTERAGENCY

COMMITTEE ON TRANSFER OF TECHNOLOGY. REQUEST THAT MISSION SUBMIT CABLE REPORT OF RESULTS OF MEETING ASAP.

3. TEXT OF POSITION PAPER FOLLOWS:

QUOTE: PROBLEM: THE PURPOSE OF THIS MEETING IS TO FORMULATE AND COORDINATE A DEVELOPED NATIONS' (GROUP B) POSITION REGARDING A CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY. THE GOAL, TO THE EXTENT FEASIBLE, IS TO ARRIVE AT A COHESIVE, POSITIVE AND EFFECTIVE POLICY -- TO HAVE AT LEAST A BROAD CONSENSUS ON WHAT IS ACCEPTABLE TO THE GROUP B COUNTRIES. THIS COULD TAKE THE FORM OF A SET OF GUIDELINES CONTAINING CHAPTER HEADINGS AND THE PRINCIPAL ELEMENTS OF EACH CHAPTER, INCLUDING MORE DETAILED SECTIONS WHERE THIS IS POSSIBLE. ADDITIONALLY, "CRITIQUE" PAPERS WHICH SET FORTH THE BASIC GROUP B POSITION ON A GIVEN ISSUE WOULD BE USEFUL. THE JULY 17-18 MEETING IS ESSENTIALLY ORGANIZATIONAL -- PLANS WILL BE ESTABLISHED FOR ACHIEVING AS MANY OF THESE OBJECTIVES AS POSSIBLE PRIOR TO THE MEETING OF THE UNCTAD COMMITTEE ON TRANSFER OF TECHNOLOGY IN NOVEMBER, 1975. THE USDEL WILL BE RESPONSIBLE FOR THE U.S. POSITION IN DETERMINING THE GENERAL FORM, CONTENT AND STRATEGY OF THE GROUP B POSITION ON TRANSFER OF TECHNOLOGY, FOR IDENTIFYING THE BASIC ISSUES INVOLVED, AND FOR ASSIGNMENT OF RESPONSIBILITIES FOR PREPARATION OF INITIAL DRAFTS ON THE IDENTIFIED ISSUES. THE USDEL WILL NOT BE RESPONSIBLE FOR TAKING A SUBSTANTIVE POSITION ON THE VARIOUS (DETAILED) ELEMENTS CONTAINED IN THE ISSUES RAISED AT THIS MEETING.

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BRIEF BACKGROUND: PROPOSALS FOR A CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY REACHED THEIR MOST ADVANCED STAGE AT THE MAY 5-16 MEETING IN GENEVA OF THE UNCTAD GROUP OF EXPERTS ON A CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY. THE USDEL SHOULD REFER TO THE U.S. REPORT OF THAT MEETING, AS WELL AS THE REPORT OF THE GROUP OF EXPERTS (UNCTAD DOCUMENT TD/B/C.6/1 OF MAY 26, 1975), FOR GUIDANCE ON WHAT TOOK PLACE AT THAT MEETING, AND THE BASIC POSITIONS TAKEN BY THE U.S. AND OTHERS. SPECIAL ATTENTION SHOULD BE GIVEN TO THE DEVELOPING NATIONS' (GROUP OF 77) PROPOSALS FOR A CODE OF CONDUCT (TD/B/C.6/AC.1/L.1/REV.1), AND TO THE GROUP B PAPER ON OBJECTIVES, PRINCIPLES AND GUIDELINES FOR TRANSFER OF TECHNOLOGY

(TD/B/C.6/AC.1/L.2).

THE MANDATE OF THE MAY MEETING OF THE GROUP OF EXPERTS WAS TO "PREPARE A DRAFT OUTLINE TO SERVE AS THE BASIS FOR THE PREPARATION OF A UNIVERSALLY APPLICABLE CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY." ALTHOUGH THIS MANDATE WAS NOT FULFILLED (I.E., JOINT DRAFTING DID NOT OCCUR OWING TO THE STRENUOUS OBJECTION OF GROUP B TO DRAFT A CODE ON THE BASIS OF THE GROUP OF 77 PAPER), A FULLER UNDERSTANDING OF THE POSITIONS OF THE RESPECTIVE GROUPS WAS REALIZED. ON THE BASIS OF THIS WORK, THE MANDATE FOR THE NEXT SESSION (NOV. 1975) OF THE COMMITTEE ON TRANSFER OF TECHNOLOGY, AND A CONCURRENT MEETING OF THE GROUP OF EXPERTS WILL BE TO DRAFT THE "OUTLINE" OF A CODE OF CONDUCT. THE GROUP OF 77, AND THE UNCTAD SECRETARIAT FOR THAT MATTER, WILL PRESS FOR IMMEDIATE DRAFTING. THEREFORE, TAKING INTO ACCOUNT THE FAR-REACHING CONSEQUENCES OF THESE PROPOSALS AND THE COMPLEXITIES OF THE ISSUES, THE GROUP B COUNTRIES RESOLVED TO HAVE INTERIM MEETINGS PRIOR TO NOVEMBER TO FORMULATE AND COORDINATE A COMMON POSITION, THEREBY STRENGTHENING OUR COLLECTIVE HAND IN DEALING WITH THE SWEEPING AND DETAILED PROPOSALS OF THE GROUP OF 77. IT IS AGAINST THIS BACKGROUND THAT THE JULY 17-18 MEETING UNDER OECD AUSPICES HAS BEEN SCHEDULED.

U.S. POSITION:
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1) FORM, CONTENT AND STRATEGY OF GROUP B POSITION.
USDEL SHOULD LEND FULL SUPPORT TO FURTHER FORMULATION AND COORDINATION OF THE GROUP B POSITION. WHILE BEING FLEXIBLE ON THE FORM THAT THIS TAKES, USDEL SHOULD SUPPORT THE FOLLOWING GENERAL PLAN OF ACTION:

-- (A) THAT GROUP B UTILIZE THE PAPER IT APPROVED IN GENEVA IN MAY ON OBJECTIVES, PRINCIPLES, AND GUIDELINES FOR TRANSFER OF TECHNOLOGY AS A BASE FOR DEVELOPING A FULLER PAPER WHICH CONTAINS THE ESSENTIAL ELEMENTS OF WHAT GROUP B CONSIDERS TO BE ACCEPTABLE IN AN EVENTUAL CODE OF CONDUCT.

-- (B) THAT A DRAFT OUTLINE OF A CODE OF CONDUCT BE PREPARED WHICH INCLUDES CHAPTER HEADINGS AND THE ESSENTIAL ELEMENTS TO BE INCLUDED UNDER EACH CHAPTER. ASSUMING A CONSENSUS CAN BE ACHIEVED BETWEEN NOW AND NOVEMBER, THIS COULD BE TABLED AS GROUP B'S VERSION OF AN "OUTLINE" OF A CODE OF CONDUCT WITH STATUS EQUIVALENT TO ANY DRAFT TABLED BY THE GROUP OF 77. THE USDEL SHOULD PROPOSE THAT THE U.S. PREPARE THIS PAPER, SINCE WE HAD PRIME RESPONSIBILITY FOR THE EARLIER GROUP B PAPER. THE U.S. WOULD BE PREPARED TO COMPLETE A DRAFT BY SEPTEMBER 15

FOR EARLY CIRCULATION TO ALL MEMBERS OF GROUP B.

-- (C) THAT DRAFT CRITIQUE OR POSITION PAPERS BE PREPARED BY INDIVIDUAL MEMBERS OF GROUP B ON THOSE ISSUES IDENTIFIED AS BEING RELEVANT AND REQUIRING GROUP B TREATMENT (SEE ITEM 2 BELOW). THESE PAPERS, IF GENERALLY AGREED UPON, WOULD FORM THE BASIS FOR GROUP B'S POSITION AT THE GROUP OF EXPERTS MEETING IN GENEVA. IN SOME CASES, AS APPROPRIATE, THEY MIGHT BE EDITED SO AS TO BE INCORPORATED INTO THE DRAFT OUTLINE OF A CODE DESCRIBED IN PARAGRAPH 1(B) ABOVE.

-- (D) THE USDEL SHOULD EMPHASIZE: (I) THAT THIS WORK, AS WE SEE IT, REPRESENTS A POSITIVE EFFORT ON THE PART OF GROUP B TO ARRIVE AT A BALANCED AND CONSTRUCTIVE SOLUTION TO WIDE DIVERGENCIES IN VARIOUS PROPOSALS FOR A CODE OF CONDUCT; (II) THAT THIS WORK BE CONSISTENT UNCLASSIFIED

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WITH THE PRINCIPLES AGREED UPON BY GROUP B IN GENEVA LAST MAY, INCLUDING THE UNANIMOUS POSITION THAT ANY INTERNATIONAL INSTRUMENT BE LEGALLY NON-BINDING, I.E., A SET OF VOLUNTARY GUIDELINES; (III) THAT WE DO NOT WISH TO MERELY REACT DEFENSIVELY, ON A PARAGRAPH-BY-PARAGRAPH BASIS, TO THE GROUP OF 77 DOCUMENT, BUT WILL TAKE FULLY INTO ACCOUNT THE 77 PROPOSALS IN FORMULATING OUR POSITION; (IV) THAT THESE INITIAL DRAFTS SHOULD BE COMPLETED IN ADVANCE OF THE NEXT GROUP B COORDINATION MEETING, WHICH WE UNDERSTAND TO BE SCHEDULED FOR THE LATTER HALF OF OCTOBER, 1975. ON THIS POINT, THE USDEL SHOULD SUGGEST THAT THIS MEETING BE SCHEDULED FOR 2-4 DAYS IN EARLY OR MID OCTOBER, IN ORDER TO PERMIT SUFFICIENT TIME FOR GOVERNMENTS TO REVIEW THEM AND TO ACHIEVE GENERAL AGREEMENT ON THEM PRIOR TO THE NOVEMBER MEETINGS. IN THIS EVENT, DRAFT PAPERS SHOULD BE COMPLETED BY SEPTEMBER

20 AT THE LATEST, AND CIRCULATED TO GOVERNMENTS PRIOR TO THE OCTOBER MEETING. TO SAVE TIME, THE USDEL SHOULD SUGGEST THAT THESE DRAFTS BE CIRCULATED DIRECTLY BETWEEN THE GROUP B GOVERNMENTS, RATHER THAN AWAITING TRANSLATION AND PRINTING BY THE OECD SECRETARIAT.

2) IDENTIFICATION OF BASIC ISSUES FOR WHICH A GROUP B POSITION IS DESIRED, AND ASSIGNMENT OF DRAFTING RESPONSIBILITIES. THE USDEL SHOULD SUPPORT FORMULATION OF A GROUP B POSITION ON THE FOLLOWING ISSUES. FOLLOWING EACH OF THESE ARE THE COUNTRIES WHICH WE CONSIDER TO BE MOST APPROPRIATE FOR ASSUMING DRAFTING RESPONSIBILITY:

-- (A) BINDING VS. NON-BINDING NATURE OF A CODE (GUIDELINES) AND ARBITRATION. ON THIS FUNDAMENTAL ISSUE, ARE SEEKING A PAPER WHICH SETS FORTH THE REASONS WHY

GROUP B OPPOSES A LEGALLY BINDING CODE. JAPAN. FRANCE.

-- (B) UNIVERSAL NATURE OF GUIDELINES. ON THIS ISSUE MOST GROUP B COUNTRIES, INCLUDING THE U.S., AND SOME OF THE GROUP OF 77 REPRESENTATIVES, BELIEVE THAT ANY AGREEMENT SHOULD APPLY EQUALLY TO SUPPLIERS AND RECIPIENTS OF TECHNOLOGY (RECOGNIZING CERTAIN OBLIGATIONS ON THE PART OF BOTH), TO RECIPIENT AS WELL AS SUPPLIER GOVERN-
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MENTS, AND TO PUBLIC AS WELL AS PRIVATE ENTITIES. ON THE LATTER POINT, WE HAVE IN MIND THAT THESE OBLIGATIONS, WHICH ALL TOO FREQUENTLY ARE AIMED AT MULTINATIONAL ENTERPRISES ONLY, SHOULD ALSO APPLY TO ALL PRIVATE ENTERPRISES, GOVERNMENTS, GOVERNMENT CORPORATIONS, STATE TRADING ORGANIZATIONS, AND CARTEL OPERATIONS. DISTINCT FROM THE U.S. POSITION, THE SWISS HAVE RESERVED ON THIS CONCEPT, SINCE THEY DO NOT WANT TO SUBJECT INTRA-DEVELOPED COUNTRY TRANSACTIONS TO A CODE OF CONDUCT. IT MAY ALSO BE APPROPRIATE TO INCLUDE IN ANY STUDY THE GROUP B POSITION ON THE POSSIBLE EXTENSION OF THE EFFECTS OF A CODE OR GUIDELINES FROM SIGNATORY TO NON-SIGNATORY COUNTRIES, I.E., ON A NON-RECIPROCAL BASIS. AUSTRALIA. CANADA.

-- (C) RESTRICTIVE BUSINESS PRACTICES AND CARTELS. THE SUBJECT OF RESTRICTIVE BUSINESS PRACTICES IS RECEIVING INCREASING ATTENTION IN VARIOUS FORA (UNCTAD, OECD, WIPO), INCLUDING PROPOSALS FOR CODES OF CONDUCT AND MODEL LAWS. THE GROUP OF 77 HAS DEVELOPED A DETAILED AND RIGID ARTICLE ON THIS SUBJECT, WHICH WOULD PROHIBIT SOME 40 RESTRICTIVE BUSINESS PRACTICES. GROUP B IN ITS

PAPER INCLUDED PRINCIPLES APPLICABLE TO GOVERNMENTS AND ENTERPRISES WHICH RELATE TO THE ELIMINATION OR REDUCTION OF UNREASONABLE RESTRICTIVE BUSINESS PRACTICES AND THE ABUSE OF A DOMINANT MARKET POSITION. IN THIS AREA WE SEEK A PAPER WHICH ELABORATES TO WHAT EXTENT, AND UNDER WHAT TERMS (E.G., RULE OF REASON) A SECTION ON RESTRICTIVE BUSINESS PRACTICES CAN BE ACCEPTED BY GROUP B. SUCH A PAPER MIGHT IDENTIFY CERTAIN RESTRICTIVE BUSINESS PRACTICES DRAWING, PERHAPS, ON WORK ALREADY ACHIEVED IN OTHER AREAS (E.G., RECOMMENDATION OF THE OECD COUNCIL ON ACTION AGAINST RESTRICTIVE BUSINESS PRACTICES RELATING TO THE USE OF PATENTS AND LICENSES -- OECD C(73)238 (FINAL) OF 1/25/74). MOREOVER, THE SAME OR A RELATED PAPER COULD DISCUSS THE FEASIBILITY OF INCLUSION OF THE MARKET ABUSES OF CARTELS IN A CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY. EUROPEAN ECONOMIC COMMUNITY. FEDERAL REPUBLIC OF GERMANY.

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-- (D) NATIONAL REGULATION. DEVELOPMENT OF A GROUP B POSITION ON THE INTERNATIONAL LAW ASPECTS OF NATIONAL

REGULATION OF TRANSFER OF TECHNOLOGY TRANSACTIONS WOULD BE MEANINGFUL. A PAPER ON THIS SUBJECT COULD INCLUDE A CRITIQUE OF THE SECTION ON NATIONAL REGULATION CONTAINED

IN THE GROUP OF 77 DOCUMENT, AS WELL AS A STATEMENT OF THE UNDERLYING LEGAL POSITION OF GROUP B ON MATTERS SUCH AS RENEGOTIATION OF CONTRACTS AND NATIONALIZATION OF FOREIGN ASSETS WITHOUT COMPENSATION. FEDERAL REPUBLIC OF GERMANY. GREAT BRITAIN. U.S.

-- (E) FACILITATION OF TRANSFER OF TECHNOLOGY. THE GROUP OF 77 VERSION OF A CODE CONTAINS CHAPTERS ON GUARANTEES AND SPECIAL TREATMENT FOR DEVELOPING COUNTRIES. IN BOTH OF THESE AREAS, THE USDEL SHOULD SUPPORT THE FORMULATION OF A GROUP B POSITION IN THE FORM OF A CRITIQUE PAPER ON THE GROUP OF 77 CHAPTERS, AS WELL AS A DISCUSSION OF WHAT GROUP B CONSIDERS APPROPRIATE FOR INCLUSION UNDER A GENERAL HEADING OF FACILITATION OF TRANSFER OF TECHNOLOGY. UNITED KINGDOM. SWITZERLAND.

THIS LIST OF TOPICS IS NOT ALL-INCLUSIVE, NOR ARE THE PROPOSED DRAFTING RESPONSIBILITIES FIXED. MOST OF THE BASIC ISSUES INVOLVED ARE COVERED, INCLUDING THOSE RAISED DURING THE GROUP OF EXPERTS MEETING IN MAY. TO THE EXTENT POSSIBLE, A GROUP B POSITION SHOULD BE ACHIEVED FOR ALL OF THESE, IRRESPECTIVE OF WHO DOES THE DRAFTING. HOWEVER, STUDIES OR DRAFTS SHOULD NOT BE PREPARED BY THE OECD SECRETARIAT. IF THE SECRETARIAT PROPOSES TO UNDERTAKE A STUDY, THE USDEL SHOULD TAKE THE POSITION THAT THIS BE THE RESPONSIBILITY OF GROUP B GOVERNMENTS. UNQUOTE. INGERSOLL

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